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SUPREME COURT

CASE NO. 82 6587

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

GERALD GLEN BOYDEN, APPELLANT

vs.

THE STATE OF CALIFORNIA, APPELLEE

ON DIRECT APPEAL FROM A DECISION

RENDERED BY THE CALIFORNIA SUPREME COURT

JURISDICTIONAL STATEMENT

DATED: April 18, 1983

GERALD GLEN BOYDEN, 04193-164(L)
3901 Klein Blvd.
Lompoc, CA 93436

APPELLANT, PER SE

QUESTION PRESENTED

Where the trial judge deliberately withdrew the defendant's sole defense from consideration by the jury, as here, whether this tactic deprived the appellant of his right to equal protection and due process of law as required by the Fourteenth Amendment?

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OPINIONS DELIVERED BELOW

A copy of the opinions rendered by the Supreme Court of California and the California Court of Appeal are attached hereto at page 11 and page 12 respectively.

JURISDICTION

This is a direct appeal from an adverse ruling by the Supreme Court of California, rendered on March 23, 1983, where Appellant Boyden was denied a hearing by that court. Appellant's NOTICE OF APPEAL was served by mail on April 18, 1983. It is believed that Section 28 U.S.C. 2106 confers jurisdiction of the appeal on this Court.

CONSTITUTIONAL PROVISION INVOLVED

This case involves the Fourteenth Amendment of the United States Constitution:

"1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Appellant Boyden was arrested by city police in Long Beach, California, on November 15, 1980. He was charged with being an ex-felon in possession of a sawed-off shotgun. His bail was fixed at one-thousand dollars. Appellant posted bail and reported to court as instructed. Evidence introduced at the trial revealed that appellant was gainfully employed as a Carpenter both before and after his arrest.

Appellant pleaded not guilty and not guilty by reason of temporary insanity. The Court ordered a bifurcated trial and appointed three psychiatrists to examine the accused.

All three doctors subsequently agreed that appellant was not insane at the time of trial. However, one expert, Dr. Alvin Davis, testified that appellant was medically and legally unconscious at the time of appellant's arrest. Dr. Davis testified at length to the effect that appellant Boyden was suffering from PCP poisoning, involuntarily administered, and that appellant lacked the requisite mens rea to commit the offense charged.

In addition, three other defense witnesses, Mattie Jones, Joan Hildreth and Micai McCaleb, corroborated the testimony of the court-appointed alienist. These witnesses offered evidence that Appellant Boyden was basically a reliable and hard working man at the time of his arrest. Of even greater importance, the witnesses testified that the behavior of Appellant Boyden appeared to be abnormal and bizarre, immediately prior to his arrest for possession of a weapon.

Toward the end of the trial, the jury was given an abundance of instructions. One of these instructions, referred to as "CALJIC 3.34," was given in its entirity. The final paragraph of this instruction is set forth here verbatim:

> "For the purposes of the case at trial, you must assume that the defendant was of sound mind at the time of his alleged conduct which, it is charged, constituted the crime described in the information."
>
> (Emphasis supplied)

Appellant raised a timely objection to the giving of this instruction, but he was overruled by the trial judge. Following his conviction, appellant renewed his objections to the concluding paragraph of CALJIC 3.34. He submitted a timely MOTION FOR NEW TRIAL and a MOTION FOR DISMISSAL OF ACTION. In both his written pleadings and his oral presentation, appellant argued that the giving of this instruction, over his objection, depirved the accused of his right to equal protection and due process of law as required by the Fourteenth Amendment. He document his argument with numerous citations and authorities previously delivered by the courts of California. Nonetheless, the trial court rejected appellant's position.

On direct appeal of this case, a novice attorney was appointed by the Court of Appeal to represent appellant. Said attorney refused to pursue appellant's objections to the giving of CALJIC 3.34 in its entirity. Although appellant wrote several letters to his court-appointed attorney with specific instructions to include this argument on direct appeal, the attorney refused to do so. The reasons for the attorney's failure to pursue this issue remain unclear.

On January 21, 1983, the judgment of conviction was affirmed by the California Court of Appeal. All reference to the giving of the fatal instruction was studiously avoided.

Boyden then submitted a timely PETITION FOR HEARING to the California Supreme Court. That Court, on March 23, 1983, denied appellant's request for a hearing. (The denial is attached hereto at page 11).

This timely JURISDICTIONAL STATEMENT follows.

STATEMENT OF THE REASONS

The reason why the question presented is so substantial as to require plenary consideration for its resolution is because the State of California, in this case, has made a grave departure from the accepted standards of judicial proceedings.

That is, appellant has contended from the outset that the instruction complained of, CALJIC 3.34, robs the jury of it's fact-finding role in regard to the defense of unconsciousness and involuntary drug intoxication. Strangely enough, appellant's position is identical with the previous views expressed by the Supreme Court of California, in bank. For example, Justice Traynor made the following announcement in People v. Henderson, 35 Cal. Rptr. 77, 60 Cal.2d 482, 386 P.2d 677:

> "Where the court instructed the jury that defendant was of sound mind where the defendant's sole defense was diminished capacity or unconsciousness, the effect of the instruction that defendant was of 'sound mind' was to withdraw from the jury all consideration of the evidence introduced in support of that defense."

Here, four witnesses testified in support of Boyden's defense, including one of the court-appointed alienists. These witnesses submitted evidence that appellant has been involuntarily poisoned with PCP and lacked the necessary mens rea to commit the offense charged. Therefore, it was manifest error for the trial

judge to withdraw such evidence from consideration by the triers of fact. Appellant contends that he is lawfully entitled to stand upon all evidence which has a probative force intrinsically. People v. Stevenson, (1978) 145 Cal. Rptr. 301, 79 Cal. App.3d 976.

> In Henderson, supra, the court concluded (en banc): "Since the defendant was deprived of the right to a jury determination of the only real issue in the case, the conviction must be reversed. The denial of such a right itself is a miscarriage of justice within the meaning of article VI, Sec. 4 1/2 of the Constitution." People v. McKay, 37 Cal.2d 792, 798, 236 P.2d 145.

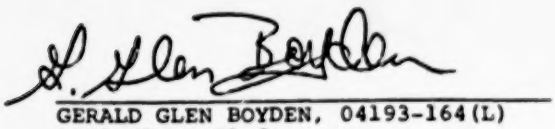
Appellant respectfully contends that the facts of the instant case are identical to the facts exhibited in Henderson, McKay and Stevenson. Where the trial judge withdrew from the jury all consideration of the evidence introduced in support of appellant's defense, it would appear that appellant's trial was reduced to a sham and a mockery.

It is interesting to note that the State of California has not bothered to deny the deprivation of Appellant Boyden's fundamental rights. Instead, the California Court of Appeal seeks to justify the end result by portraying the appellant as a "most experienced criminal practitioner." (Footnote 4, attached here at page 16). Be that as it may, the appellant had no voice in the presentation of his appeal through the State courts but he is nonetheless entitled to his constitutional right to equal protection and due process of law.

In any event, appellant respectfully submits that the State of California has launched on a grave departure from the accepted standards of judicial proceedings, in the instant case, and plenary consideration by the Court is required to correct this dangerous and shocking precedent.

Respectfully submitted,

DATED: April 18, 1983



GERALD GLEN BOYDEN, 04193-164(L)
3901 Klein Blvd.
Lompoc, CA 93436

APPELLANT, PER SE

APPENDIX

Decision rendered by the Supreme Court of California on March 23, 1983:

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

I have this day filed Order _____

In re: 2 Crim. *No.* 40467
PEOPLE
vs.
GERALD GLEN BOYDEN

Respectfully,

Clerk

NOT FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

GERALD GLEN BOYDEN,
Defendant and Appellant.

2d Crim. No. 40467
(Super. Ct. No. A022456)

FILED
JAN 2 11
CLAY ROBBINS, JR. Clerk
Deputy Clerk

Defendant Gerald Boyden appeals from the judgment entered following a jury trial that resulted in his conviction for possessing a sawed-off shotgun (Count I; Pen. Code, § 12020, subd. (a)) and possessing such firearm after having been previously convicted of a felony wherein a firearm was used.[1/] (Count II; Pen. Code, § 12560.) He contends:

1. A two-year mid-term sentence was imposed on Count II and it was ordered to run consecutive to any existing federal sentence appellant might yet be serving. Count I was stayed.

"I. Defendant was arrested and detained without probable cause in violation of his Fourth Amendment right.

"II. Defendant was denied effective assistance of counsel in violation of his Sixth Amendment right.

"III. A. The trial court by compelling defendant to stand trial wearing jail garb deprived the defendant of equal protection of the law.

"B. The trial court in compelling defendant to present his defense in jail clothing denied the defendant the fundamental constitutional right of a fair trial due to the impairment of the presumption of innocence.

"IV. It was an abuse of discretion to allow the prosecution to impeach the defendant and Joan Hildreth with a 1975 heroin importation conviction."

The basic facts underlying this proceeding were not the subject of dispute. On November 15, 1980, police officers employed by the City of Long Beach responded to a citizen's report of a suspicious person. Arriving on the scene they observed appellant who matched the description of the party reported and upon approaching him noticed what appeared to be the butt of a gun protruding from under his jacket. As the officers attempted to recover

this item appellant commendably[2/] cautioned, "Easy, man, I've got a shotgun in there."

Once they had secured the weapon and saw that it had been illegally shortened, they placed appellant under arrest. Subsequently, after appellant had waived his constitutional rights, "'Officer Gaeta asked subject if he was on parole and he stated he was on parole from the federal prison system, had been out of prison for only six months. [¶] When Officer Gaeta told subject both officers had seen him in possession of the shotgun he stated, "Man, you got enough to violate me so I don't know nothing about no shotgun."'"

At all times appellant appeared to be in full possession of his faculties and not at all under the influence of alcohol or any drug.

By way of defense appellant was content to admit that although he did not doubt the testimony of the People's witnesses regarding his possession of the contraband weapon, nonetheless he allegedly could not remember how he came to be possessed of it, or, in fact, anything else that had occurred after he had left a party a short distance away in his car to meet a person at the

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2. There was a shell in the chamber of this weapon and its safety was off.

location where he was arrested.[3/] He, therefore, speculated that perhaps someone had given him PCP or some other hallucinogenic substance without his knowledge.

Appellant presented as witnesses friends who had been at the party but their testimony was basically unfavorable to his hypothetical defense. Appellant also called one psychiatrist who testified concerning the effect of PCP generally.

Although appellant had entered pleas of not guilty and not guilty by reason of insanity, no evidence tending to suggest the latter possibility was presented, other than the one doctor who had testified concerning the effects of PCP. All three experts who had examined appellant were agreed he was not insane, and two of them clearly rejected the thought that he had been under the influence of PCP, voluntarily or involuntarily consumed.

In sum, the jury truly had nothing to consider as to either plea and after deliberating only for a few minutes in each instance, they found appellant guilty and sane at the time of the offense.

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3. This assertion was impeached by proof that at appellant's federal probation violation hearing he had acknowledged removing the shotgun from his car and later concealing it under his coat. On that occasion he had blamed his conduct on simple alcoholic intoxication.

Appellant's initial contention is quite meritless. The police needed no "probable cause" to walk towards him on a public street, although they had both a reason and the duty to do so in this instance. The officers had not detained appellant, and in fact had not even spoken to him when they observed his partially concealed weapon. Once observed, of course, they properly took possession of it.

Appellant's second contention is equally meritless. After much verbal fencing and typical gamesmanship from this most experienced criminal practitioner,[4/] the court allowed him to represent

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4. Reported appellate decisions involving appellant include: People v. Boyden (1967) 251 Cal.App.2d 798; People v. Boyden (1965) 237 Cal.App.2d 695; People v. Boyden (1960) 181 Cal.App.2d 48; People v. Boyden (1953) 116 Cal.App.2d 278; Boyden v. United States (1972) 463 F.2d 229; Boyden v. United States (1971) 443 F.2d 377; Boyden v. United States (1970) 427 F.2d 895; Boyden v. United States (1969) 407 F.2d 140; Boyden v. United States (1966) 363 F.2d 551; Boyden v. Webb (1953) 208 F.2d 201; Ex Parte Boyden (1953) 205 F.2d 485; Boyden v. United States (1950) 185 F.2d 402; Boyden v. Smith, Atty. General, et al. (1982) ___ U.S. ___ [50 U.S.L.W. 3916]; In re Boyden (1982) ___ U.S. ___ [50 U.S.L.W. 3549]; In re Boyden (1981) ___ U.S. ___ [50 U.S.L.W. 3403]; Boyden v. United States (1973) 410 U.S. 912; Boyden v. United States (1971) 404 U.S. 859; Boyden v. United States (1970) 400 U.S. 848; Boyden v. United States (1969) 396 U.S. 881; Boyden v. Curtis, U.S. District Judge (1968) 392 U.S. 922; Boyden v. California (1968) 389 U.S. 568; Boyden v. California (1967) 386 U.S. 278; Boyden v. United States

(continued on next page--)

himself, as was his constitutional right. (Faretta v. California (1975) 422 U.S. 806.) To the extent that appellant's desire so to do may have been motivated by his appointed counsel's decision not to call as a witness the citizen who had made the "suspicious person" report to the police, or one of the psychiatrists who had examined appellant, the court's refusal to provide appellant with other counsel who would follow appellant's dictates was entirely proper. (People v. Young (1981) 118 Cal.App.3d 959, 967.)

The testimony of the woman who had first noticed appellant was irrelevant on any issue of search and seizure (see supra) and was unfavorable on the merits. The subject doctor's report was also unfavorable on the one issue he had been appointed to determine, i.e., appellant's sanity.

Appellant's contention regarding his clothing also fails. First, we note that it was never actually

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4. (Continued--)

(1966) 385 U.S. 978; Boyden v. California (1966) 385 U.S. 114; Boyden v. California (1961) 365 U.S. 650; Boyden v. United States (1951) 341 U.S. 911.

Appellant's drug importation conviction apparently occurred in Canada. We have not checked to determine whether or not it generated any published appellate challenges.

shown that appellant was wearing "jail garb".[5/] Neither does the record clearly reveal what he wore during the succeeding days of his trial. However, assuming that he was not properly attired throughout, and that suitable arrangements should have been made to correct this situation (see generally People v. Taylor (1982) 31 Cal.3d 488, 493 et seq.), we nonetheless unhesitatingly hold that beyond any reasonable, or unreasonable, doubt no possibility exists that the outcome would have been different in the absence of such a shortcoming.

The jury had already seen appellant before any question of his clothing arose; he freely acknowledged his past prison record, and as previously noted, there truly was no defense possible under the circumstances.

Lastly, for similar reasons we will not tarry long over appellant's final contention. We must, of course, assume since our Supreme Court has so held, that a seller of heroin may be a man of his word, unlikely to lie from the witness stand. (See People v. Spearman (1979) 25 Cal.3d 107.) It may even be true that the credibility of

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5. Appellant's attire was described only as follows: "THE DEFENDANT: Second, two things. One, could I get some presentable clothes to wear by court order? As you see, my shirt has paint on it, my shoes have a hole. Rope holding up my pants."

one who goes a step further, as did appellant, and imports heroin into another county is equally free from taint. If so, then the court's decision to permit such impeachment would have been improper. Nonetheless, for the reasons heretofore indicated, even such presumed error could not possibly have affected the outcome of this proceeding.

The judgment is affirmed.

NOT FOR PUBLICATION.

Gates, J.
GATES

We concur:

Compton, Acting P.J.
COMPTON

Beach, J.
BEACH

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. GERALD GLEN BOYDEN, Defendant and Appellant.	)	Crim. _____ 2d CRIM. NO. 40467

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the appellant, Gerald Glen Boyden, intends to prosecute an appeal to the Supreme Court of the United States from the judgment heretofore rendered in this cause on March 23, 1983. Jurisdiction to entertain said appeal is conferred upon the United States Supreme Court by Title 28, United States Code, Section 2106.

DATED: April 18, 1983

G. Glen Boyden

GERALD GLEN BOYDEN, 04193-164(L)
3901 Klein Blvd.
Lompoc, CA 93436

APPELLANT, PER SE

cc:

Clerk, Court of Appeal
3580 Wilsire Blvd., Rm. 301
Los Angeles, CA 90010

CASE NO. 82 6587

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

GERALD GLEN BOYDEN, APPELLANT

VS.

THE STATE OF CALIFORNIA, APPELLEE

ON DIRECT APPEAL FROM A DECISION

RENDERED BY THE CALIFORNIA SUPREME COURT

FORMA PAUPERIS APPLICATION

DATED: April 18, 1983

G. Glen Boyden

GERALD GLEN BOYDEN, 04193-164(L)
3901 Klein Blvd.
Lompoc, CA 93436

APPELLANT, PER SE

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CASE NO. 82 6587

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

GERALD GLEN BOYDEN, APPELLANT

VS.

THE STATE OF CALIFORNIA, APPELLEE

ON DIRECT APPEAL FROM A DECISION
RENDERED BY THE CALIFORNIA SUPREME COURT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Appellant, GERALD GLEN BOYDEN, respectfully urges the Court to allow him to proceed in forma pauperis with the instant appeal for the following reasons:

1. Appellant has no money or property and he is currently confined in prison;

2. Both the trial court and the court of appeal have already granted leave to proceed in forma pauperis below.

For the above reasons, appellant requests leave to proceed in forma pauperis with the instant appeal.

Respectfully submitted,

DATED: April 18, 1983

GERALD GLEN BOYDEN, 04193-164(L)
3901 Klein Blvd.
Lompoc, CA 93436

APPELLANT, PER SE

AFFIDAVIT IN SUPPORT OF MOTION

TO PROCEED IN FORMA PAUPERIS

I, GERALD GLEN BOYDEN, being first duly sworn, depose and say that I am the appellant in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are meritorious.

I further swear that the responses which I have made to the questions below relating to my ability to pay the costs on appeal are true.

1. Are you presently employed? NO
   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

   1980 — $2,000 per month

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO
   a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.
3. Do you own any cash or checking or savings account? NO
   a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property 9 (excluding ordinary household furnishings and clothing)? NO

   a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons. NONE

I understand that a false statement or answer to the questions in this affidavit will subject me to penalties for perjury.

DATED: April 18, 1983

G. Glen Boyden

GERALD GLEN BOYDEN, 04193-164(L)
3901 Klein Blvd.
Lompoc, CA 93436

APPELLANT, PER SE